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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THOMAS ELLIS,

Plaintiff and Respondent,

v.

PATRICIA ELLIS,

Defendant and Appellant.

A105996

**(San Mateo County
Super. Ct. No. CIV 435991)**

Defendant and appellant Patricia Ellis (Mother) appeals the order denying her special motion to strike the action of plaintiff and respondent Thomas Ellis (Father) for damages resulting from Mother's alleged false report of child abuse and intentional infliction of emotional distress. The order was made pursuant to Code of Civil Procedure section 425.16, familiarly known as the anti-SLAPP statute.¹ Mother contends Father's complaint "arises from" her privileged activities and that Father failed to demonstrate a prima facie case of falsely reporting child abuse.

BACKGROUND

I. Father's Complaint

Father's first cause of action sought damages for initiating a false child abuse

¹ SLAPP is an acronym for "[s]trategic lawsuit against public participation." (*Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1109, fn. 1 (*Briggs*).)

report. It was brought under Penal Code section 11172² and alleges: on or about December 3, 2002, Mother “caused her daughter Gabrielle Ellis, who is blind [and] developmentally disabled with a mental age of 9, to make false charges[,] and/or with reckless disregard of the truth or falsity of such a report[,] of sexual abuse against [Father] to the San Mateo Police Department. A supplemental police report was completed[,] and no further action was taken by [the police] to obtain a criminal complaint” Father “was informed by the police department after an evaluation of the accusations that the allegations of Gabrielle were frivolous, untrustworthy and would never be used to obtain a criminal complaint against him.” The complaint further alleged that Mother acted without probable cause in initiating a police investigation of Father, and she did not honestly and reasonably believe him to be guilty of Gabrielle’s accusations.

Father’s second cause of action for intentional infliction of mental distress incorporated the allegations of the first cause of action and further alleged: he is the former husband of Mother. Because of the turmoil of their dissolution, and the fact Mother’s live-in boyfriend had been charged with sexually molesting Gabrielle, Mother has attempted to shift the blame for her boyfriend’s sexual acts onto Father. Her conduct was intentional and malicious and done to cause Father humiliation, mental anguish, and emotional and physical distress.

II. Mother’s Anti-SLAPP Motion

Mother filed an anti-SLAPP special motion to strike Father’s complaint on the grounds its allegations arose from an act she undertook in furtherance of her

² Penal Code section 11172 is a provision within the Child Abuse and Neglect Reporting Act. (Pen. Code, § 11164 et seq, hereafter the Child Abuse Reporting Act.) The Child Abuse Reporting Act mandates that certain people report abuse and neglect of children under 18 and immunizes these mandated reporters from civil or criminal liability for any required report. (Pen. Code, §§ 11164, 11165, 11166, 11172.) A mandated reporter who fails to report an incident of known abuse is guilty of a misdemeanor. (Pen. Code, § 11166, subd. (b).) The Act provides that nonmandated reporters may be liable for damages for making reports they know to be false or make with reckless disregard of their truth or falsity. (Pen. Code, § 11172.) Parents are not mandated reporters. (Pen. Code, § 11165.7.)

constitutional rights of petition and free speech. (Code Civ. Proc., § 425.16, subds. (b)(1) & (e).³) Mother contended that Gabrielle was a dependent adult, as defined by the Elder Abuse and Dependent Adult Civil Protection Act (Welf. & Inst. Code, § 15600; hereafter the Dependent Adult Protection Act); she was Gabrielle's "care custodian" and thus a "mandated reporter," as those terms are defined by the Dependent Adult Protection Act; and the Dependent Adult Protection Act obligates a mandated reporter who knows of an apparent incident of physical abuse to a dependent adult to report the suspected abuse to a local law enforcement agency. Therefore, the misconduct attributed to Mother in Father's complaint--causing Gabrielle to report her described improper conduct by Father to the police--was protected activity, because it was an act legally mandated of Mother under the reporting requirements of the Dependent Adult Protection Act.

Mother's supporting declaration, dated January 28, 2004, stated: Gabrielle was born July 19, 1982. She has been blind since birth and has been diagnosed as developmentally disabled. The parties were appointed coconservators of Gabrielle in 2000 and are now divorced. In December 2002, Gabrielle told her that Father had sexually assaulted her (Gabrielle) and demanded to be taken to the police so Gabrielle could file a report. She took Gabrielle to the San Mateo Police Department at Gabrielle's insistence and was informed that the police conducted a video interview with Gabrielle. She was not present during the interview.

In further support of her anti-SLAPP motion, Mother requested the court to take judicial notice of the August 2000 order appointing her and Father coconservators of Gabrielle, the September 2000 letters of conservatorship, the February 2003 order that removed the parties as Gabrielle's conservators and ordered the preparation of a petition for appointment of the public guardian as her successor conservator, and "the fact" that Gabrielle was born July 19, 1982.

III. Father's Opposition

Father opposed Mother's anti-SLAPP motion on the grounds: (1) Mother was not a mandated reporter of child abuse under the Child Abuse Reporting Act; (2) under the

³ All further section references are to the Code of Civil Procedure.

Child Abuse Reporting Act, sexual abuse includes developmentally disabled persons because the Act's definition of sexual assault includes the offenses with which Mother's boyfriend was charged (Pen. Code, §§ 243.4, 288, 289, 11165, subd. (1)(a)), and those offenses encompass sexual acts on a person who is seriously disabled; (3) a person, i.e., Mother, who procures a third person, i.e., Gabrielle, to initiate a malicious prosecution is equally liable with the third person for civil damages; (4) "care custodians" are mandated reporters under the Dependent Adult Protection Act and are immune from liability, but at the time of Father's alleged assault, Mother was not Gabrielle's care custodian because Gabrielle lived at the California School for the Blind and spent only alternate weekends with Mother.

In support of Father's opposition to Mother's anti-SLAPP motion, his attorney declared: he has appeared on behalf of Father in all civil and criminal proceedings described in his declaration. On September 7, 2002, Father gave a report to two police officers that Gabrielle, who has a mental age of nine, had been sexually abused for five years by Mother's live-in boyfriend in Mother's house. The police questioned Gabrielle to confirm the allegations. A police detective videotaped interviews with Gabrielle, Mother, and the boyfriend. A criminal complaint issued charging the boyfriend with four counts of various sexual assaults; he was released on bail; and his trial was scheduled to begin four days before the date of the instant declaration. On September 17, 2002, Father filed a civil complaint against the boyfriend for sexual harassment of Gabrielle. On December 3, 2002, Mother brought Gabrielle to the police department where Gabrielle gave a videotaped statement that Father had sexually abused her. In the videotape, which the attorney viewed, Gabrielle told the interviewing officer that Mother told her to tell the officer that all previous statements she made about the boyfriend's sexual abuse were lies and mistakes. Later in the interview Gabrielle indicated that everything she had previously said about the boyfriend was true. On December 11, 2002, Father obtained an order forbidding the boyfriend from having any contact with Gabrielle. In support of this restraining order he had offered the September 2002 police investigation report. He also "had a subpoenaed [sic] witness, Julie Zurndorfer, psychologist for the California School

For The Blind, where Gabrielle was in attendance[,] to testify that Gabrielle was unable to give testimony at the hearing [] because [Mother] had been harassing Gabrielle to change her statements of sexual abuse by [the boyfriend] so that the criminal charges could be dropped. [¶¶] In the proffered testimony of [Zurndorfer] before [the judge] at the sexual harassment proceedings on December 11, 2002, I had the [psychologist] prepared to state that Gabrielle told [the psychologist] that [Mother] strongly urged Gabrielle on October 3, 2002 to ‘change her story as to [the boyfriend] or she wouldn’t be allowed any future visits.’”⁴ On February 26, 2003, pursuant to Father’s petition that Mother be removed as Gabrielle’s coconservator, the court removed both parties as conservators and ordered the appointment of the public guardian as successor conservator. It also ordered the appointment of an attorney for Gabrielle, and monitoring of all contact between Mother and Gabrielle. On November 11, 2003, the court ordered Mother to have no further contact with Gabrielle until termination of the boyfriend’s criminal case.

In further opposition to Mother’s anti-SLAPP motion, Father asked the court to take judicial notice of a September 24, 2002 police report. The report describes the police investigation following Gabrielle’s claim of repeated sexual assault by Mother’s boyfriend, and states that Gabrielle “reported being victimized by” the boyfriend for approximately the previous five years. Father also asked the court to take judicial notice of the December 11, 2002 restraining order against the boyfriend.

IV. Mother’s Response

In her response to Father’s opposition to her anti-SLAPP motion, Mother objected to the court taking judicial notice of the September 24, 2002 police report because it was not a document subject to judicial notice under Evidence Code section 452, it was hearsay, and there was no adequate foundation to establish the authenticity of its information. She also objected to the declaration of Father’s attorney as hearsay. She

⁴ It is unclear from the language in the attorney’s declaration whether the psychologist actually testified at the December 11, 2002 hearing or whether she had simply been subpoenaed and was available to testify.

further asserted that Father failed to offer any competent evidence to establish his reasonable possibility of prevailing on either of his causes of action.

V. Order

The trial court concluded Mother, as moving party, failed to meet her burden “to substantiate that her conduct was protected free speech” and denied her anti-SLAPP motion.

DISCUSSION

I. The Anti-SLAPP Statute

Section 425.16, the anti-SLAPP statute, provides, inter alia, that a “cause of action against a person arising from any act of that person in furtherance of the person’s [constitutional] right of petition or free speech . . . in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim.” (§ 425.16, subd. (b)(1).)

An act in furtherance of a person’s right of petition or free speech in connection with a public issue “includes: (1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law; (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law; (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest; (4) or any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.” (§ 425.16, subd. (e).)

Resolution of an anti-SLAPP motion requires the court to engage in a two-step process. First, the court decides whether the defendant has made a threshold showing that the plaintiff’s cause of action is one arising from the defendant’s protected activity. A defendant meets this burden by demonstrating that his or her claimed wrongful act fits one of the categories spelled out in section 425.16, subdivision (b)(1). (*Navellier v.*

Sletten (2002) 29 Cal.4th 82, 88 (*Navellier I.*) If the court finds the defendant has made such a showing, it then determines whether the plaintiff has demonstrated a probability of prevailing on the claim. (§ 425.16, subd. (b)(1); *Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 67.)

In determining whether to grant or deny an anti-SLAPP motion, the court considers the pleadings and supporting and opposing affidavits that state the facts on which the liability or defense is based. (§ 425.16, subd. (b)(2).) As this section has been interpreted, the court, when it examines the plaintiff's affidavits in support of the plaintiff's "second step burden," must consider whether he has presented sufficient evidence, i.e., a showing by competent and admissible evidence, to establish a prima facie case on his causes of action. When the court considers the defendant's opposing affidavits, it cannot weigh them against the plaintiff's affidavits, but must only decide whether the defendant's affidavits, as a matter of law, defeat the plaintiff's supporting evidence. (*Du Charme v. International Brotherhood of Electrical Workers* (2003) 110 Cal.App.4th 107, 112; *Paul for Council v. Hanyecz* (2001) 85 Cal.App.4th 1356, 1365, disapproved on other grounds in *Equilon Enterprises v. Consumer Cause, Inc.*, *supra*, 29 Cal.4th at p. 68, fn. 5.)

Appellate courts exercise their independent judgment to determine both prongs of an anti-SLAPP motion. (*Du Charme v. International Brotherhood of Electricians*, *supra*, 110 Cal.App.4th at p. 112; *Monterey Plaza Hotel v. Hotel Employees & Restaurant Employees* (1999) 69 Cal.App.4th 1057, 1064.)

Because the purpose of the anti-SLAPP statute is to encourage continued participation in matters of public significance and to prevent the chilling of such participation through abuse of the judicial process, courts are to construe the statute broadly, in order to protect direct petitioning of the government and petition-related statements. (§ 425.16, subd. (a); *Briggs*, *supra*, 19 Cal.4th at p. 1120.)

II. *Abuse and Neglect Reporting Acts*

a. The Child Abuse Reporting Act

The purpose of the Child Abuse Reporting Act is to protect children from abuse and neglect. (Pen. Code, § 11164.) As noted in footnote 2, *ante*, it obligates enumerated people to report abuse and neglect of children. For purposes of the Act, children are defined as persons under age 18. (Pen. Code, §§ 11164, 11165.) The Act immunizes mandated reporters from civil or criminal liability for any required or authorized report. (Pen. Code, § 11172.) The Act's mandated reporters do not include parents. (Pen. Code, § 11165.7.)

The Child Abuse Reporting Act further provides that “[a]ny other person reporting a known or suspected instance of child abuse or neglect shall not incur civil or criminal liability as a result of any report authorized by this [Act] unless it can be proven that a false report was made and the person knew that the report was false or was made with reckless disregard of the truth or falsity of the report, and any person who makes a report of child abuse or neglect known to be false or with reckless disregard of the truth or falsity of the report is liable for any damages caused.” (Pen. Code, § 11172.)

b. Dependent Adult Civil Protection Act

The Dependent Adult Civil Protection Act was the result of legislative recognition that dependent adults may be subjected to abuse and that the state has a responsibility to protect such persons, who, because of their mental, verbal, and physical limitations, may be incapable of asking for help. (Welf. & Inst. Code, § 15600, subds. (a), (c), (d).) The Legislature's intent in enacting the Act was to provide that, *inter alia*, local law enforcement agencies receive referrals or complaints from any source having reasonable cause to know a dependent adult's welfare is endangered and to take action to ensure that individual's safety. (Welf. & Inst. Code, § 15600, subd. (i).)

The purpose of the Dependent Adult Civil Protection Act is to require “health practitioners, care custodians, clergy members, and employees of county adult protective services agencies and local law enforcement agencies to report known or suspected cases of abuse of . . . dependent adults and to encourage community members in general to do

so.” (Welf. & Inst. Code, § 15601, subd. (c).) It is also to protect “all those persons who report suspected cases of abuse, provided that the report is not made with malicious intent.” (Welf. & Inst. Code, § 15601, subd. (b).)

A dependent adult is defined as “any person between the ages of 18 and 64 years . . . who has physical or mental limitations that restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities. . . .” (Welf. & Inst. Code, § 15610.23.)

“Care custodian” is defined as “an administrator or an employee of any of the following [25 enumerated] public or private facilities or agencies, or persons providing care or services for elders or dependent adults, including members of the support staff and maintenance staff[.]” (Welf. & Inst. Code, § 15610.17.)

The Dependent Adult Protection Act further states: “(a) Any person who has assumed full or intermittent responsibility for care or custody of [a] . . . dependent adult, whether or not that person receives compensation, including administrators, supervisors, and any licensed staff of a public or private facility that provides care or services for . . . dependent adults, or any . . . dependent adult care custodian . . . is a mandated reporter. [¶] (b) Any mandated reporter, who, in his or her professional capacity, or within the scope of his or her employment, has observed or has knowledge of an incident that reasonably appears to be physical abuse . . . , or is told by [a] . . . dependent adult that he or she has experienced behavior . . . constituting physical abuse . . . or reasonably suspects that abuse, shall report the known or suspected instance of abuse by telephone immediately or as soon as practicably possible, and by written report sent within two working days” to, inter alia, the local law enforcement agency. (Welf. & Inst. Code, § 15630.)

Any person who is not a mandated reporter, as defined in Welfare and Institutions Code section 15630, who has knowledge, or reasonably suspects, that a dependent adult has been the victim of abuse in any place other than a long-term care facility may report the abuse to the local law enforcement agency.

The Dependent Adult Protection Act further states: “No care custodian . . . who reports a known or suspected instance of . . . dependent adult abuse shall be civilly or criminally liable for any report required or authorized by this [Act]. . . . Any other person reporting a known or suspected instance of . . . dependent adult abuse shall not incur civil or criminal liability as a result of any report authorized by this [Act], unless it can be proven that a false report was made and the person knew that the report was false.” (Welf. & Inst. Code, § 15634, subd. (a).)

III. *Mother’s Privileged Acts*

The gravamen of Father’s complaint is that Mother caused Gabrielle to make false statements about him to the police. As impliedly alleged in Father’s complaint, Mother’s wrongdoing is a species of defamation: although Mother may not have made the purportedly false statements to the police herself, she did so constructively, using Gabrielle as the medium for her communication. For purposes of Mother’s burden in her anti-SLAPP motion, there is no question that Father’s complaint arose from this act of Mother. The question is whether, as Mother declared in support of her anti-SLAPP motion, her act of taking the physically and developmentally disabled Gabrielle to the police, so Gabrielle could report Father’s conduct as she had described it to Mother, constituted a prima facie showing of an act in furtherance of Mother’s constitutional right to petition and/or free speech in connection with a public issue. (*Paul for Council v. Hanyecz, supra*, 85 Cal.App.4th at p. 1365.) For purposes of this analysis, it is immaterial whether Gabrielle was a child or a dependent adult at the time of Mother’s act.

The constitutional right to petition includes the basic act of seeking administrative action. (*Briggs, supra*, 19 Cal.4th at p. 1115.) Thus, communications that are preparatory to or in anticipation of commencing official proceedings have been held to come within the protection of the anti-SLAPP act. (*Ibid.*; *Dove Audio, Inc. v. Rosenfeld, Meyer & Susman* (1996) 47 Cal.App.4th 777, 784 (*Dove Audio*).) In *Briggs*, for example, the plaintiff landlords brought a defamation action against a nonprofit tenant counseling organization that had assisted tenants in filing claims against the landlords

with the federal Department of Housing and Urban Development (HUD) or in small claims court. (*Briggs, supra*, 19 Cal.4th at pp. 1109-1110.) In *Dove Audio*, the plaintiff record publisher that produced a multi-celebrity charity recording of poetry brought a libel action against a law firm that had asked the celebrities by letter to support the law firm's intended effort to file a complaint with the state attorney general asking for an investigation of unpaid royalties for the poetry recording. (*Dove Audio, supra*, 47 Cal.App.4th, *supra*, at pp. 780, 784.) Counseling the tenants in anticipation of the HUD investigation and seeking the celebrities' support for an attorney general investigation were both deemed communications made in connection with an official proceeding authorized by law and thus in furtherance of the respective defendants' right to petition. (*Briggs, supra*, 19 Cal.4th at p. 1115; *Dove Audio, supra*, 47 Cal.App.4th at p. 784.)

Similarly, reporting to the police suspected child or dependent adult abuse is a communication made in connection with an official proceeding. Both the Child Abuse Reporting Act and the Dependent Adult Protection Act authorize an official government agency like the local police to investigate referrals from all sources of a possibly endangered child or dependent adult, whether or not the source is a "mandated reporter," and to take any action necessary to protect that child or adult. (Pen. Code, § 11172; Welf. & Inst. Code, § 15631, subd. (b).) Furthermore, as both Acts make clear, the issue of protecting children and dependent adults from abuse is one of statewide public interest. (Pen. Code, § 11164; Welf. & Inst. Code, § 15600, subd. (a).) The two Acts distinguish "mandated" and "nonmandated" reporters to the extent "mandated" reporters have absolute immunity from liability for reporting abuse, but they do not limit a nonmandated person's right to initiate the proceedings to protect a child or dependent adult from abuse.

Although Mother's declaration in support of her anti-SLAPP motion is unfortunately sketchy on the details of her taking Gabrielle to the police department, its only reasonable implication is that Mother did more than simply transport Gabrielle to the station and drop her off at the curb. Given Gabrielle's undisputed physical and developmental disabilities, Mother would necessarily have had to facilitate Gabrielle's report, as by escorting Gabrielle into the station and, at the least, explaining to the

officers that Gabrielle was disabled and wanted to tell them about conduct by Father that appeared to constitute abuse. We conclude therefore that Mother met her prima facie burden of showing that Father's causes of action arose from an act she had taken in furtherance of her right to petition/free speech in connection with an issue of public interest: reporting suspected child or dependent adult abuse to the police in order to prompt action by that official government agency.

IV. Probability of Prevailing

Because we conclude Mother satisfied the first prong of the anti-SLAPP test, we must now determine whether Father satisfied the second prong by demonstrating a probability of prevailing on his claim. (*Equilon Enterprises, supra*, 29 Cal.4th at p. 67.) In other words, did he demonstrate that his complaint was legally sufficient and supported by a sufficient prima facie showing of facts to sustain a judgment in his favor if his evidence is credited, i.e., competent and admissible? (*Fashion 21 v. Coalition for Humane Immigrant Rights of Los Angeles* (2004) 117 Cal.App.4th 1138, 1147; *Navellier v. Sletten* (2003) 106 Cal.App.4th 763, 768 (*Navellier II*).)

To decide a complaint's potential merit, courts consider the pleadings and evidence of both parties, but they do not weigh the credibility or comparative probative strength of competing evidence. (*Navellier II, supra*, 106 Cal.App.4th at p. 768.) Courts should grant an anti-SLAPP motion if, as a matter of law, the defendant's evidence in support of the motion defeats the plaintiff's attempt to establish evidentiary support for his claim. (*Ibid.*) The plaintiff's burden in the second prong of the anti-SLAPP test is akin to that of a party opposing a motion for summary judgment. (*Ibid.*)

To prevail in his first cause of action for false reporting under the Child Abuse Reporting Act, Father had to establish that Gabrielle was a person whom the act was designed to protect: a person under the age of 18. (Pen. Code, §§ 11164, 11165.) According to Mother's declaration, Gabrielle was born July 19, 1982. It is undisputed that Mother brought Gabrielle to the police station to report Father's alleged abuse in December 2002. It is also undisputed that, prior to December 2002, the parties had been named as Gabrielle's coconservators. Conservators are only appointed for persons 18

years or older, except for married or formerly married minors, and there was no evidence that Gabrielle was ever married. (Prob. Code, §§ 1800.3, subd. (a)(1) & (2), 1820, subd. (b).) At age 20 years and 5 months, Gabrielle was no longer within the purview of the Child Abuse Reporting Act when this allegedly false report was made, but, as an undisputedly physically and developmentally disabled person between 18 and 64 years, was instead under the protection of the Dependent Adult Protection Act. (Welf. & Inst. Code, § 15610.23.)

Although Father's memorandum of points and authorities in opposition to Mother's anti-SLAPP motion asserts that Mother had Gabrielle falsely tell the police that Father sexually abused her when she was between the ages of 15 and 18, there is no competent evidence to support this assertion. Father's complaint simply alleges that on December 3, 2002, Mother caused Gabrielle to make false charges about Father's sexual abuse; there are no allegations as to when this abuse purportedly occurred. Furthermore, Father never disputed Gabrielle's age to the trial court, and in his appellate brief he acknowledges that she was 20 years old as of September 2002. Thus, Father did not demonstrate a probability of prevailing on his cause of action for a false report in violation of the Child Abuse Reporting Act.

To prevail on his other cause of action for intentional infliction of emotional distress, Father had to show (1) extreme and outrageous conduct by Mother made with the intent of causing him, or with reckless disregard of the probability of causing him, emotional distress; (2) he suffered severe or extreme emotional distress; and (3) his injuries were actually and proximately caused by Mother's outrageous conduct. (*Cochran v. Cochran* (1998) 65 Cal.App.4th 488, 494.) Father's cause of action alleges that Mother caused Gabrielle to make a false report of his sexual abuse to the police in an attempt to shift the blame for Mother's boyfriend's sexual abuse of Gabrielle to Father and for the purpose of causing Father to suffer humiliation, mental anguish, and emotional and physical distress. He further alleges that he suffered these injuries as a result of Mother's act.

To meet the first requirement of this tort, the alleged conduct must be so extreme that it exceeds all bounds usually tolerated in a civilized community. (*Cochran, supra*, 65 Cal.App.4th at p. 494.) Conduct will generally be actionable when an average member of the community, hearing the facts, would resent the actor and exclaim, “Outrageous!” (*Ibid.*) Conduct may also be outrageous if the defendant abuses a relationship or position that gives her power to damage the plaintiff’s interest. (*Agarwal v. Johnson* (1979) 25 Cal.3d 932, 946.)

For purposes of argument, we accept that the average member of the community would be outraged at hearing that one parent has caused his or her physically and mentally disabled adult child to make a false report to the police of sexual abuse of the adult child by that child’s other parent. However, Father has presented no evidence to show that Mother goaded or pressured Gabrielle to make a false report. There was no evidence as to what Mother instructed or encouraged Gabrielle to tell police about him prior to taking her to the station, nor did Father present evidence of what Gabrielle actually told the police about him. Father’s attorney declared that Gabrielle, in her videotaped police interview, stated to the officer that Mother told her to say that all her previous statements about Mother’s boyfriend’s abuse were lies, but the attorney’s declaration contains no specifics concerning any comments Gabrielle made about Father during this interview. The fact that neither the police nor the district attorney took action against Father after Gabrielle’s interview reasonably implies Gabrielle gave them no factual basis to suspect him of sexual abuse, but it does not demonstrate that Gabrielle ever actually made false statements to the police about Father’s abusing her, let alone false statements instigated by Mother.

Furthermore, Father has not demonstrated harm from Mother’s alleged act of causing Gabrielle to make a false police report. The emotional suffering element of the tort requires a showing of severe and substantial, as distinguished from trivial or transitory, distress. It is distress so severe that no reasonable person in civilized society could be expected to endure it. The intensity and severity of the distress are factors to be considered in determining its severity. (*Bogard v. Employers Casualty Co.* (1985) 164

Cal.App.3d 602, 617.) Although Father pled that Mother's act caused him humiliation, mental anguish, and emotional and physical distress, he did not set forth any facts in his affidavit or offer other documentation to indicate the nature or extent of the suffering he incurred as a result of her act.

Absent evidence of Gabrielle making specific false statements about Father, of how Mother caused Gabrielle to make such statements, and of particularized injuries he suffered as a result, Father did not meet his burden of demonstrating a probability of prevailing on his cause of action for intentional infliction of emotional distress.

Because Father did not make a prima facie showing that Mother's act violated the statute on which his first cause of action rests, or that her conduct constituted intentional infliction of emotion distress, the denial of the anti-SLAPP motion was error.

DISPOSITION

The order is reversed. Father's request for sanctions denied. Costs to Mother.

Jones, P.J.

We concur:

Stevens, J.

Simons, J.